

REMARKS

The U.S. Patent and Trademark Office (PTO) rejected Claims 1, 3, 4, 5, 7, and 17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,962,081 to Dobry et al. (*Dobry*) in view of alleged admissions on page 2 of the instant application. Respectfully, Applicants traverse this rejection.

According to the PTO, *Dobry*, at column 1, lines 49-65, discloses “plastic composition sheets that are adapted for use as floor coverings wherein the process of making such a plastic composition sheet entails depositing uniformly on a backing material a smooth layer of a mixture of fine particles and flat plastic chips.” Further, the PTO states that “[t]he process of the disclosed invention is applicable to various types of plastic compositions used in surface coverings including linoleum (column 2, lines 71-72). Additionally, the PTO asserts that “Figure 2 is a cross-sectional view of the surface covering and specifically shows that the plastic chips (10) are imbedded in the matrix of fine granules (11) and wherein a backing material (20) is also present.” Apparently, it is the position of the PTO that *Dobry* teaches a process for producing a patterned flexible linoleum sheet material which comprises 1) dispersing at least one type of mixed mass particle onto at least one side of a rolled linoleum sheet and 2) substantially warp-free pressing the mixed mass particles into the rolled linoleum sheet such that the particles are not substantially distorted, as currently claimed. Respectfully, *Dobry* does not teach or suggest this process as explained below.

The PTO admits that *Dobry* does not teach or suggest that the rolled linoleum sheet is cut, rotated, and stacked. However, it is the position of the PTO that the admissions on page 2, last paragraph, of the specification of the above-identified application renders these steps obvious. Specifically, the PTO asserts that:

the instant application states that in a typical process of making a linoleum sheet mixed masses produced from the standard linoleum raw materials, e.g. linoleum cement, wood flour, powdered cork, chalk, white pigment and colored pigments, are mixed in defined proportions as a function of the desired pattern and are fed into a roll mill in the form of a carded mixed mass. The multicolored speckled linoleum sheet thus obtained (about 1.6 m wide is divided into pieces about 2 m long and arranged scale-like in the form of a multilayer sheet stack. The oriented

speckling of the individual sheet extends perpendicularly to the calendaring process direction on the further manufacturing process. The sheet stack is now fed into the nip of a calendar and rolled with friction into the desired thickness of the top layer.

Thus, according to the PTO, it would have been obvious to one having ordinary skill in the art to cut, rotate, and stack the rolled linoleum sheet taught by *Dobry* given that the specification of the instant application states that these are typical steps employed in the manufacture of linoleum sheets. Applicants respectfully disagree with this assertion as explained below.

In the Office Action, the PTO states that *Dobry* at column 1, lines 49-65; column 2, lines 37-45 and 71-72; column 5, lines 27-30; and column 6, lines 11-31 and 70-75, teaches the first two steps of the invention as claimed in Claim 1. Accordingly, the following is a review of the relied upon text of *Dobry*.

At column 1, lines 49-65, *Dobry* states:

An object of the invention is to produce a flexible smooth surface floor covering of plastic composition assimilating stone terrazzo. Another object of the invention is to produce such a floor covering in a simple and economical manner capable of adaptation to commercial processing. A further object is to provide a process for producing a plastic composition sheet having unique structural characteristics, long-wearing attributes and a distinctive and attractive decorative appearance.

In accordance with the invention, a flexible smooth surface floor covering resembling stone terrazzo is produced by depositing uniformly on a backing material a smooth layer of a mixture of fine particles of plastic composition of at least two distinct colors and then scattering materially larger, irregular, flat plastic chips on top of the fine particles in such a manner that the chips lie flat and relatively few of them overlap. (Emphasis added.)

Dobry states, at column 2, lines 37-44:

The plastic chips are preferably within the range of about 0.18 to about 1.00 inch in diameter. They necessarily have to be at least three or four times as

large as the finer particles to produce the desired decorative design in the finished produce. A chip thickness of about 0.01 to about 0.025 inch is suitable for consolidation into a sheet of about 0.03 inch. The thickness of the chips should be less than the thickness of the final sheet.

At column 2, line 71, through column 3, line 4, *Dobry* states:

The process of this invention is applicable to various types of plastic composition used in surface coverings, including linoleum, rubber compositions, asphalt compositions, synthetic resin type plastic compositions and the like. Each type of plastic composition requires its own particular processing conditions. (Emphasis added.)

Dobry states, at column 5, lines 27-30:

Typical of other suitable resins are polyacrylonitrile, polymethacrylates and hydrocarbon resins such as polybutylene and polyethylene.

At column 6, lines 11-32, *Dobry* states:

The plastic composition can also be an uncured linoleum. Linoleum is composed of drying or semidrying oils, resin, fillers and pigments. The siccative oil can be linseed, tall, perilla, rubberseed or any oil which upon oxidation yields a substantial amount of the oxidized glycerides of linoic and/or linolenic acids in fluid phase. The resin can be rosin, ester gum, fused congo, congo ester, kaurie gum or the like. The filler can be ground cork, wood flour, whiting, china clay, asbestine or the like. A typical linoleum formulation contains from 25 to 50% linoleum cement, 25 to 35% vegetable filler and 25 to 40% mineral filler. The linoleum composition is prepared by mixing the siccative oil and resin and oxidizing the mixture while heating. When the linoleum cement has been properly oxidized and aged, it is mixed with the filler and pigment and calendered into a sheet. The initial pressing of linoleum in the process of the invention would usually be carried out in a conventional press or a rotary press at a temperature of about 160° to 220°F, and a pressure of about 400 pounds per linear inch. (Emphasis added.)

Dobry states at column 6, lines 70, through column 7, line 2:

The thickness of the plastic layer on the web can be varied depending on the ultimate use of the product. If the product is to be used with a backing, a thickness of about .020 to .060 inch is normally required. If, on the other hand, the backing web is to be stripped from the final product, a somewhat thicker layer is desirable, such as 0.030 to 0.08 inch.

Dobry is silent with respect to warp-free pressing of mixed mass particles into at least one side of a rolled linoleum sheet. As stated at column 3, lines 12-20:

A suitable backing material 20 such as a fibrous felt is supplied from a roll 19 and passed over a fixed bed 21. A section of the web 20 is then completely covered with fine multi-colored particles 11 of plastic composition. Chips 10 of similar plastic composition are scattered on top of the layer of particles in such a manner that they substantially cover the fine particles, but relatively few of the chips overlap or touch each other. (Emphasis added.)

Further, *Dobry* states that “[i]f the plastic composition is a linoleum composition, it is desirable to use two presses in series, the first press being an initial consolidation of the material on the backing and the second pressing operation serving to further smooth and finish the surface of the sheet.” (Emphasis added.) See *Dobry*, column 4, lines 70-75.

Thus, when *Dobry* employs linoleum as the “plastic composition,” the linoleum sheet is formed by completely covering a backing material, not a rolled linoleum sheet, with fine multi-colored particles of linoleum and thereafter scattering linoleum chips on top of the layer of particles. See *Dobry* column 3, lines 12-20. Thereafter, the covered “web” is initially pressed to form an initial consolidation of the material on the backing, followed by a second pressing to further smooth and finish the surface of the sheet. See *Dobry*, column 4, lines 70-75. This step-wise pressing process is consistent with *Dobry*’s statement that “[t]he initial pressing of linoleum in the process of the invention would usually be carried out in a conventional press or a rotary press at a temperature of about 160° to 220°F, and a pressure of about 400 pounds per linear inch.” See column 6, lines 28-32, and above. There is no teaching whatsoever by *Dobry* to initially form a rolled linoleum sheet and thereafter warp-free press mixed mass particles into the

linoleum sheet. Accordingly, *Dobry* does not teach or suggest these steps of the claimed invention.

With respect to the alleged admissions on page 2 in the specification of the above-identified application, Applicants respectfully assert that one of ordinary skill in the art would not combine the process taught by *Dobry* and the manufacturing process employed to form Marmorette® or Marmoleum®. *Dobry* specifically teaches a step-wise process to form a continuous sheet based upon the process described above. See column 4, lines 1-26. Accordingly, we believe that one of ordinary skill in the art would avoid the manufacturing process employed to form Marmorette® or Marmoleum® when employing the process of *Dobry*.

Further, *Dobry* does not describe or teach the use of linoleum mixed mass particles comprising a smaller proportion of linoleum cement than the rolled linoleum sheet. Linoleum mixed mass particles do not have a flat chip-like form as required by *Dobry* (having a diameter of about 0.18 to 1.00 inch and a thickness of about 0.01 to 0.025 inch) See column 2, lines 37 to 44. As is apparent from the text passage on page 4, last paragraph, of the present application, linoleum mixed mass particles are present in the form of a granular dispersion mass, i.e., in a granular form. As can be taken from the text passage on column 1, lines 15 to 19, and column 2, line 71, to column 3, line 9, of *Dobry*, the focus of *Dobry* is not on the field of linoleum coverings. In that regard, *Dobry* is silent with respect to varying the linoleum cement content of the particles with respect to that of the rolled linoleum sheet. Thus, *Dobry* does not teach the claimed use of linoleum mixed mass particles comprising a smaller proportion of linoleum cement compared to the rolled linoleum sheet. As a result of a smaller proportion of linoleum cement, the linoleum mixed mass particles are harder and thus, can be efficiently pressed in a warp-free manner into the rolled linoleum sheet without a substantial distortion. Accordingly, *Dobry* does not teaching or is capable of suggesting to one of ordinary skill in the art the use of linoleum mixed mass particles comprising a smaller proportion of linoleum cement than the rolled linoleum sheet and the advantageous effects which are achievable thereby.

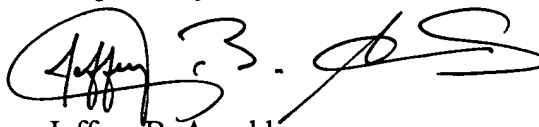
Accordingly, *Dobry*, either alone or in combination with the alleged admissions on page 2 of the instant application, does not teach or suggest each and every element of the claimed invention. In view of the above remarks, Applicants respectfully request that the rejection of Claims 1, 3, 4, 5, 7, and 17 under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

In view of the foregoing remarks, Applicants respectfully assert that the rejection of the claims as set forth in the Office Action of June 16, 2005 have been addressed and overcome. Applicants further respectfully assert that all claims are in condition for allowance and request that a Notice of Allowance be issued. If issues may be resolved through Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney at (404) 879-2433 is courteously solicited.

The Commissioner is hereby authorized to charge any fees due, or credit any overpayment, to Deposit Account No. 09-0528.

Respectfully submitted,



Jeffery B. Arnold
Reg. No. 39,540

Date: November 16, 2005
Womble Carlyle Sandridge & Rice, PLLC
P.O. Box 7037
Atlanta, GA 30357-0037
(404) 879-2433 (direct)
(404) 879-2933 (facsimile)

Our Docket No.: D078 1100 (41461.0011.8)